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COURTS Juries: Enact the "Criminal Justice Act of 2005"; Provide for a Short Title; Provide that the Denial of a Defendant's Motion to Recuse May Be Subject to Interlocutory Appeal; Provide that the State May Appeal from an Order, Decision, or Judgment of a Superior Court Granting a Motion for New Trial or Denying a Motion by the State to Recuse or Disqualify a Judge; Provide the State and the Accused with the Same Number of Peremptory Challenges in Misdemeanor, Felony, and Death Penalty Cases and in Challenging Alternate Jurors; Provide the Manner in Which Peremptory Challenges Are Made; Change the Size of the Jury

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CODE SECTIONS:	O.C.G.A §§ 15-12-125 (amended), -165 (amended), -169 (amended)
BILL NUMBER:	HB 170
ACT NUMBER:	8
GEORGIA LAWS:	2005 Ga. Laws 20
SUMMARY:	The Act provides the defense and the prosecution with an equal number of peremptory strikes in criminal trials. The Act establishes the number of peremptory challenges at three strikes

for misdemeanors, nine strikes for felonies, and fifteen strikes for cases seeking the death penalty. The Act gives the prosecuting attorney the right to always conclude the argument to the jury. The Act also provides for discovery in sentencing proceedings, admission of character evidence, and makes orders denying the recusal of a judge directly appealable. This Peach Sheet addresses only the equal peremptory strikes provisions of the Act.

Effective Date: July 1, 2005

History

The 2005 legislative session was the latest effort in a 30-year journey for advocates of equal jury strikes in criminal cases.¹ HB 170 provided the defense and the prosecution with equal strikes in misdemeanor, felony, and death penalty cases.² Governor Perdue's floor leader, Rich Golick, introduced HB 170 to level the playing field between the defense and prosecution.³ This legislation aligns Georgia with over 40 other states, as well as the Federal courts, which all allow equal peremptory strikes in jury trials.⁴ Although providing the defense and the prosecution equal strikes has been the national trend, the Georgia General Assembly has blocked similar legislation for over 30 years.⁵ Similar legislation passed the Senate several times in recent years, but stalled in the Democrat-led House

1. Jim Houston, *Senate Oks Jury Strikes, Victims' Bills: Prosecution Would Get Equal Strikes in All Criminal Cases*, COLUMBUS LEDGER-ENQUIRER, Mar. 25, 2005, available at 2005 WLNR 4666991.

2. See Audio Recording of House Proceedings, Mar. 11, 2005 (remarks by Rep. Rich Golick), http://www.georgia.gov/00/article/0,2086,4802_6107103_33078458,00.html [hereinafter House Audio].

3. Bill Rankin & Nancy Badertscher, *Legislature 2005: Jury Strike Legislation Moves on House OKs Crime Bills*, ATLANTA J. CONST., Mar. 12, 2005, at B3, available at 2005 WLNR 3864701.

4. *Id.*

5. *Id.*

of Representatives.⁶ In fact, equal strikes legislation almost passed in 2004, but the House of Representatives “short-circuited” the effort at the last minute.⁷ In addition to the political battle that has persisted for the last 30 years, the criminal defense bar has also provided much resistance to the passage of equal strikes legislation.⁸ But once the Republican Party obtained control of the House of Representatives and Governor Sonny Perdue supported the legislation, equal strikes became a real possibility.⁹

Bill Tracking of HB 170

Consideration by the House

Representatives Rick Golick, Jay Roberts, David Ralston, Robert Mumford, and Phyllis Miller of the 34th, 154th, 7th, 95th, and 106th districts, respectively, sponsored HB 170.¹⁰ The House first read the bill on January 27, 2005, and the House Committee on Judiciary Non-Civil favorably reported the bill on March 10, 2005.¹¹ The bill passed the House on March 11, 2005, passed the Senate on March 24, 2005, and the Governor signed the bill into law April 5, 2005.¹²

The Bill, As Introduced

HB 170 affected peremptory strikes in four main areas: misdemeanor juror selection, felony juror selection, death penalty juror selection, and alternate juror selection.¹³ The equalization of peremptory strikes in all four areas was the most important change.¹⁴

6. See Telephone Interview with Jack Martin, Attorney, Jack Martin, P.C. (Apr. 27, 2005) [hereinafter Martin Interview]; Telephone Interview with J. Tom Morgan, Attorney, Balch & Bingham, LLP (Apr. 19, 2005) [hereinafter Morgan Interview].

7. See Telephone Interview with Rep. Rich Golick, House District No. 34 (May 4, 2005) [hereinafter Golick Interview].

8. See Morgan Interview, *supra* note 6.

9. See Martin Interview, *supra* note 6; Morgan Interview, *supra* note 6.

10. See HB 170, as introduced, 2005 Ga. Gen. Assem.

11. State of Georgia Final Composite Status Sheet, HB 170, Jan. 27, 2005 (May 11, 2005); State of Georgia Final Composite Status Sheet, HB 170, Mar. 10, 2005 (May 11, 2005).

12. State of Georgia Final Composite Status Sheet, HB 170, Mar. 11, 2005 (May 11, 2005); State of Georgia Final Composite Status Sheet, HB 170, Mar. 24, 2005 (May 11, 2005); State of Georgia Final Composite Status Sheet, HB 170, Apr. 5, 2005 (May 11, 2005).

13. See HB 170, as introduced, 2005 Ga. Gen. Assem.

14. See *id.*; Morgan Interview, *supra* note 6.

Previous law provided the defense twice as many peremptory strikes as the prosecution.¹⁵ Additionally, in misdemeanor, felony, and death penalty trials, the bill set the number of peremptory strikes at three, six, and ten, respectively.¹⁶ These amounts largely reduced the amount of peremptory strikes available to the defense, but the reduction may have the benefit of creating a faster jury selection process, shorter trials, and fairer juries because the bill reduced the number of jurors that can be peremptorily removed almost by half.¹⁷

House Committee Substitute

The House Committee on Judiciary Non-Civil did not disrupt the parity of the equal strikes provisions in its offered substitute.¹⁸ The Committee did, however, amend the number of peremptory strikes allowed in misdemeanor, felony, and death penalty cases.¹⁹ The Committee increased the number of strikes in all cases: misdemeanor strikes increased from three to four, felony strikes increased from six to twelve, and death penalty strikes increased from ten to eighteen.²⁰ The prosecution maintained the same number of strikes as the defense in all cases.²¹

The Floor Amendments

Floor amendments offered to the House Committee substitute did not modify the peremptory strikes provisions of the Act.²² The

15. 1995 Ga. Laws 1292, § 9, at 1298 (formerly found at O.C.G.A. § 15-12-125 (2001)) (providing the defense with four and the prosecution with two peremptory strikes in misdemeanor cases); 1992 Ga. Laws 1981, § 2, at 1982 (formerly found at O.C.G.A. § 15-12-165 (2001)) (providing the defense with twelve and the prosecution with six peremptory strikes in felony cases and providing the defense with twenty and the prosecution with ten peremptory strikes in death penalty cases); 1957 Ga. Laws 466, § 2, at 467 (formerly found at O.C.G.A. § 15-12-165 (2001)) (providing the defense with twice as many peremptory strikes as the prosecution in the selection of alternate jurors).

16. HB 170, as introduced, 2005 Ga. Gen. Assem.

17. See House Audio, *supra* note 2 (remarks by Rep. Ed Setzler); Morgan Interview, *supra* note 6.

18. See HB 170 (HCS), 2005 Ga. Gen. Assem.

19. *Id.*

20. Compare HB 170 (HCS), 2005 Ga. Gen. Assem., with HB 170, as introduced, 2005 Ga. Gen. Assem.

21. See HB 170 (HCS), 2005 Ga. Gen. Assem.

22. See HB 170 (HCSFA1), 2005 Ga. Gen. Assem.; HB 170 (HCSFA2), 2005 Ga. Gen. Assem.

amendments pertained to juvenile adjudications and evidentiary rules.²³

House Floor Debate

The floor debate began with Representative Rich Golick, the Governor's floor leader, summarizing the legislation's purpose.²⁴ According to Representative Golick, lawmakers based this legislation on the fundamental tenants of fairness, parity, and equity that should exist "on both sides of the aisle . . . the aisle between the defense table and the prosecution table."²⁵ Representative Golick stated that the Governor asked for "fair" legislation to place the defense and the prosecution on equal footing.²⁶ Representative Golick emphasized the legislation was not about obtaining more convictions, but the legislation's purpose was to provide the defense and the prosecution with the same tools at trial.²⁷

Although many representatives commented on the tremendous improvements of the legislation over previous versions, several representatives spoke out against its adoption and questioned aspects of the legislation.²⁸ A major concern pertained to the likelihood of obtaining more convictions even though the state conviction rate is about 95% and most prisons are near maximum capacity.²⁹ Additionally, some viewed the prosecution's resources as heavily outweighing those of the normal defense and believed that this legislation gave the prosecution more advantages.³⁰ Another major fear was the possible effect the legislation may have on minority representation on jury panels because there is an 80% chance of obtaining a conviction when five or more white males are on a jury.³¹ A final concern, raised by Representative Bordeaux of the 162nd district, was the higher possibility of convicting the "wrong"

23. See HB 170 (HCSFA1), 2005 Ga. Gen. Assem.; HB 170 (HCSFA2), 2005 Ga. Gen. Assem.

24. See House Audio, *supra* note 2 (remarks by Rep. Rich Golick).

25. *Id.*

26. *Id.*

27. *Id.*

28. See *id.* (remarks by Reps. Mark Hatfield, David Lucas, Winfred Dukes, Alisha Morgan, Thomas Bordeaux, and Randal Mangham).

29. See *id.* (remarks by Reps. David Lucas and Thomas Bordeaux).

30. See House Audio, *supra* note 2 (remarks by Rep. Winfred Dukes).

31. See *id.* (remarks by Reps. Alisha Morgan and Randal Mangham).

person.³² Representative Bordeaux referred to the bill as a “prosecutor’s wish list” that chipped away at fundamental safeguards in the justice system.³³ The prosecution is supposed to encounter difficulty in obtaining a conviction, and that is why the system requires proof beyond a reasonable doubt and a presumption of innocence.³⁴

Representative Setzler of the 35th district rebutted these objections and stated that the system also requires a fair and unbiased trial by one’s peers.³⁵ Providing more strikes to the defense creates a biased jury from the beginning.³⁶ Representative Bordeaux responded by stating,

I think numerous studies have shown that jurors, and even potential jurors, who know that the accused has been arrested, investigated, and indicted by a grand jury . . . believe he is guilty. Having more strikes for the defendant actually achieves the goal of having [an] unbiased [and] unprejudiced jury that is a jury of [one’s] peers.³⁷

Although the floor debate focused on the legislation’s potential harms, the Committee’s efforts in improving the legislation and its attempts to create a more fair and equal system of justice were generally well-received.³⁸

The House passed HB 170 by a vote of 130 to 40.³⁹

Consideration by the Senate

The Senate first read HB 170 on March 12, 2005, and the Senate Judiciary Committee favorably reported and offered a substitute on March 21, 2005.⁴⁰ The main thrust of the changes to the legislation

32. *See id.* (remarks by Rep. Thomas Bordeaux).

33. *Id.*

34. *Id.*

35. *See id.* (remarks by Rep. Ed Setzler).

36. *See House Audio, supra* note 2 (remarks by Rep. Ed Setzler).

37. *Id.* (remarks by Rep. Thomas Bordeaux).

38. *See House Audio, supra* note 2.

39. Georgia House of Representatives Voting Record, HB 170 (Mar. 11, 2005).

40. State of Georgia Final Composite Status Sheet, HB 170, Mar. 12, 2005 (May 11, 2005); State of Georgia Final Composite Status Sheet, HB 170, Mar. 21, 2005 (May 11, 2005).

occurred outside of the equal peremptory strikes provisions.⁴¹ However, the Committee altered the number of strikes available to the defense and prosecution while maintaining the equality aspect of the provision.⁴² The Committee substitute decreased the possible number of peremptory strikes in all cases by reducing the number of strikes from four to three in misdemeanor trials, from twelve to six in felony cases, and from eighteen to fifteen in death penalty cases.⁴³ The fluctuation in the number of peremptory strikes proposed throughout the legislation's cycle seemed to depend on which side had control on any specific day.⁴⁴ The final numbers the Georgia General Assembly agreed upon represent a sufficient compromise among all the players.⁴⁵ Representative Golick stated that his objective throughout the legislative cycle was to ensure that all parties voiced their opinions and concerns in both houses.⁴⁶ The rigorous examination that resulted from urging both prosecutors and defense attorneys to come to the table and participate in the legislative process made the document a stronger piece of legislation.⁴⁷

Senate Floor Debate

Although the floor debate included a few tangential comments with respect to the equal peremptory strikes provisions, most time was spent debating other amendments beyond the scope of this Peach Sheet.⁴⁸ The Senate gave the equal peremptory strikes provisions no further consideration.⁴⁹

The Senate passed HB 170 with a 44 to 3 vote.⁵⁰

Final Considerations by the Georgia General Assembly

41. See HB 170 (SCS), 2005 Ga. Gen. Assem.

42. *Id.*

43. Compare HB 170 (SCS), 2005 Ga. Gen. Assem., with HB 170 (HCSFA), 2005 Ga. Gen. Assem.

44. See Martin Interview, *supra* note 6.

45. See Golick Interview, *supra* note 7.

46. *Id.*

47. *Id.*

48. See Audio Recording of Senate Proceedings, Mar. 24, 2005, http://www.georgia.gov/00/article/0,2086,4802_6107103_33091490,00.html [hereinafter Senate Audio].

49. *Id.*

50. Georgia Senate Voting Record, HB 170 (Mar. 24, 2005).

The Senate transmitted the amended version of HB 170 to the House on March 29, 2005, and the House agreed to the modifications to the equal preemptory strikes provisions with one exception.⁵¹ That exception was the number of preemptory strikes in felony cases.⁵² The House changed the number of preemptory strikes in felony cases from twelve to nine.⁵³ The House approved the change by a vote of 120 to 16 on March 29, 2005.⁵⁴ The Senate, in turn, approved of the modification by a vote of 42 to 4 on March 31, 2005.⁵⁵ The Governor signed the bill on April 5, 2005.⁵⁶

Analysis

The Act should bring parity and equality into Georgia's justice system and level the playing field in criminal cases.⁵⁷ The legislation is a reasonable middle ground and allows Georgia to enter the mainstream in criminal justice.⁵⁸ Although the equalization of preemptory strikes is on par with other states, the method of implementation is slightly different.⁵⁹ For example, Mississippi mandates an equal number of preemptory strikes, but Mississippi's law specifies six strikes for noncapital cases and twelve strikes in capital cases.⁶⁰ Montana also mandates equal preemptory strikes, but Montana specifies six strikes in noncapital cases and eight strikes in capital cases if the trial uses a twelve-person jury panel.⁶¹ The number of strikes drops to three if there is a six-person jury.⁶²

Georgia's reduction in overall preemptory strikes is likely to have a positive effect on the judicial system in terms of time, economics, and fairness.⁶³ The time it takes to select a jury should decrease

51. Compare HB 170 (SCS), 2005 Ga. Gen. Assem., with O.C.G.A. § 15-12-165 (2005), and State of Georgia Final Composite Status Sheet, HB 170, Mar. 29, 2005 (May 11, 2005).

52. Compare HB 170 (SCS), 2005 Ga. Gen. Assem., with O.C.G.A. § 15-12-165 (2005).

53. Compare HB 170 (SCS), 2005 Ga. Gen. Assem., with O.C.G.A. § 15-12-165 (2005).

54. Georgia House of Representatives Voting Record, HB 170 (Mar. 29, 2005).

55. Georgia Senate Voting Record, HB 170 (Mar. 31, 2005).

56. State of Georgia Final Composite Status Sheet, HB 170, Apr. 5, 2005 (May 11, 2005).

57. See House Audio, *supra* note 2 (remarks by Rep. Rich Golick).

58. See Golick Interview, *supra* note 7.

59. See MISS. CODE ANN. § 99-17-3 (1999); MONT. CODE ANN. § 46-16-116 (2003).

60. See MISS. CODE ANN. § 99-17-3 (1999).

61. See MONT. CODE ANN. § 46-16-116 (2003).

62. *Id.*

63. See Morgan Interview, *supra* note 6.

because fewer candidates will be peremptorily removed.⁶⁴ In addition, equal strikes address the issue of fundamental fairness in our judicial system.⁶⁵ Jury bias exists when juries enter the courtroom, but the justice system mandates that juries presume that a defendant is innocent.⁶⁶ This Act helps to ensure the law is no longer tilted in the defendant's favor.⁶⁷

Nonetheless, the equalization of peremptory strikes may not be such a good thing.⁶⁸ It is one more advantage in a host of prosecutorial advantages including laboratories, manpower, and other resources.⁶⁹ Many argue that jurors come in biased against the defendant who has already been investigated, arrested, and indicted.⁷⁰ As Jack Martin stated, "Jurors come to court believing anybody indicted is probably guilty. . . . This is one mechanism of removing those who are most biased against the defendant. That protection will now be diminished."⁷¹

Equal peremptory strikes is unlikely to lead to the conviction of more innocent people in Georgia.⁷² Georgia has one of the highest conviction rates in the nation, but the jury system is a fair system.⁷³ The best solution may be to get rid of peremptory strikes completely because it is nearly impossible to determine if bias is playing a part in jury verdicts.⁷⁴

The reduction in defensive peremptory strikes will place a higher burden on judges to ensure the prosecution is not excluding minority candidates based on race.⁷⁵ There has been no evidence of this occurring in any other state, and if the defense suspects a racially motivated strike, the defense can bring a "Batson challenge."⁷⁶ Additionally, since there is no longer a disparity in the juror selection

64. *Id.*

65. See Golick Interview, *supra* note 7.

66. See Morgan Interview, *supra* note 6.

67. See Senate Audio, *supra* note 48 (remarks by Sen. William Hamrick).

68. See Martin Interview, *supra* note 6.

69. *Id.*

70. See House Audio, *supra* note 2 (remarks by Rep. Thomas Bordeaux); Martin Interview, *supra* note 6.

71. See Rankin & Badertscher, *supra* note 3.

72. Martin Interview, *supra* note 6; Morgan Interview, *supra* note 6.

73. Martin Interview, *supra* note 6; Morgan Interview, *supra* note 6.

74. Martin Interview, *supra* note 6.

75. *Id.*

76. See Golick Interview, *supra* note 7; see also *Batson v. Kentucky*, 476 U.S. 79 (1986) (holding race cannot be used as the basis for peremptorily striking a juror).

process, the appellate court may be more receptive to jury challenges.⁷⁷

Although there were several modifications to the number of peremptory strikes permitted, the ratio is the most important aspect of the Act.⁷⁸ If minority representation on juries is not reduced as a result of the Act, the overall effect of the Act should be extremely positive.⁷⁹ The 30-year journey has come to an end and has resulted in a criminal justice system that is consistent with fairness, parity, and equity.⁸⁰

Chason Carroll

77. Martin Interview, *supra* note 6.

78. See Golick Interview, *supra* note 7; Martin Interview, *supra* note 6; Morgan Interview, *supra* note 6.

79. Golick Interview, *supra* note 7; Martin Interview, *supra* note 6; Morgan Interview, *supra* note 6.

80. Golick Interview, *supra* note 7.